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Extra-Judicial Killings in Democratic Nigeria vis-à-vis the Rule of Law: An Overview

Balkisu Saidu

Abstract

Generally, extra-judicial killings, summary and arbitrary executions in Nigeria were considered as part of the necessary evil of military dictatorship that dominated the polity of the country from independence to 1999. This is principally because once the military takes over the governance of the country they immediately suspend the Constitution (the supreme law of the land, which, amongst other things, guarantees and safeguards the fundamental human rights of the citizens) from operation. In the absence of the Constitution, the legal protection afforded individuals ceases to exist paving the way for arbitrary rule. However, the perpetration of extra-judicial killings under democratic administration, which is bound to protect and enforce the Constitution, raises a number of questions particularly as to whether the nation's democratic rule is in some way a mere extension of its military style leadership. This paper considers the reason-d'être of the continuation of the involvement of security forces, especially the police, in extra-judicial killings in spite of the existence of democracy in Nigeria; what is the implication of this trend on the rule of law and what measures ought to be taken to reverse it? In this analysis, the paper adopts the doctrinal methodology.

I. Introduction

Generally, extra-judicial killings,¹ summary and arbitrary executions in Nigeria were considered as part of the necessary evil of military dictatorship that dominated the polity of the country from independence to 1999. This is principally because once the military takes over the governance of the country they immediately suspend, by decree,² the Constitution from operation. The Constitution, which is the supreme law of the land, is the principal legislation that guarantees and safeguards the fundamental human rights of the citizens. In

the absence of the Constitution, the legal protection afforded individuals ceases to exist paving the way for arbitrary rule. However, the perpetration of extra-judicial killings under democratic administration, which is bound to protect and enforce the Constitution, raises a number of questions particularly as to whether the nation's democratic rule is in some way a mere extension of its military style leadership. This paper considers the reason-d'être of the continuation of the involvement of security forces in extra-judicial killings in spite of the existence of democracy in Nigeria; what is the implication of this trend on the rule of law and what measures ought to be taken to reverse it? In this analysis, the paper adopts the doctrinal methodology.

II. Analytical Framework and Methodology

Whereas, Justice Kayode Eso,³ focuses on the roles of courts in the enforcement and protection of human rights; and Olajide Olakanmi⁴ analyses the historical developments of the notion of human rights, which he linked to the struggle for self-determination, independence and equality that has taken place in many parts of the world;⁵ whereas, Professor Etannibi E.O. Alemika and Innocent C. Chukwuma,⁶ trace the historical development of modern policing and examined the facilitative and inhibitive roles of the police in pro-poor change initiatives in Nigeria, establishing linkages between economic and political structures in the country and the form and character of policing;⁷ this research aims at analysing the involvement of security agents,⁸ particularly the police force, in extra-judicial killings in democratic Nigeria and the determination of the implication of such involvement on the rule of law in the country. In so doing, the research adopts the doctrinal methodology of legal research.⁹ It reviews the existing primary legislation and other instruments as they relate to the protection of the sanctity of human life and the rights afforded persons reasonably suspected of commission of an offence under the Nigerian legal system as well as the position of International Law and international humanitarian standard on the subject. It extrapolates its findings from results of researches conducted by International Organisations such as the United Nations' bodies like the United Nations Democracy Fund (UNDEF), United Nations Development Programme (UNDP); the Human Rights Watch, Norwegian Agency for Development Cooperation (NORAD), Amnesty International as well as the National Human Rights Commission (a governmental commission established in Nigeria in 1995 by the National Human Rights Act, 1995, to, *inter alia*, monitor and investigate all alleged cases of human rights violations in the country). Upon the examination of the level of compliance with the principle of indivisibility of human rights in the protection of the sanctity of human life in democratic Nigeria and its implication on the rule of law, the paper proffers recommendations on the appropriate mechanisms necessary to ensure compliance with international standards in the protection of individual fundamental human right to life.

III. Rule of Law vis-à-vis the Human Right to Life in a Democracy

Rule of law and respect for human rights are two equally basic elements of a democratic society. Whereas rule of law and human rights could possibly exist in undemocratic regimes, true democracy can only be attained with their existence. The academic records of the philosophical notion of the rule of law find their origins in the works of early philosophers and scholars such as Aristotle who posits that “the rule of law is preferable to that of an individual.”¹⁰ Plato on his part wrote that “where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy the blessings that the gods shower on a state.”¹¹ Philosophical concepts of men like John Locke of England, Jean Jacques Rousseau of Switzerland, Karl Marx of Germany, Thomas Jefferson of United States of America; and Vladimir Ilyich Lenin of Russia have over the decades shaped the development of these two interwoven subjects of rule of law and human rights. Their works have been expounded by twentieth century scholars like the British constitutional theorist A. V. Dicey¹² who is considered as the ‘father’ of the modern day notion of rule of law. He is credited with the popularisation of the use of the phrase in academic circle from 1885. His works advocate the indivisibility of rule of law with the protection of individual human rights; stressing that when the rule of law is absent or improperly observed, human rights of citizens cannot be properly protected.

A contemporary elaboration of the ideal of the rule of law in the protection of human rights is provided by John Rawls;¹³ who, in his theory of *justice as fairness* envisions a society of free citizens holding equal basic rights cooperating within an egalitarian economic system. His account of *political liberalism* addresses the legitimate use of political power in a democracy, aiming to show how enduring unity may be achieved despite the diversity of worldviews that free institutions allow. He defines the rule of law as “the regular, impartial, and in this sense fair” administration of “public rules.” The main concern of rule of law is the proper exercise of authority and power by the State. Because human rights are requirements which every democratic State is expected to ensure to its citizens and the protection of human rights cannot be afforded in the absence of adherence to the rule of law, the two cannot be separated.

Some individual rights, such as right to life, are viewed to exist in perpetuity.¹⁴ Of course this is conditional on the holder of the rights living within the confines of the law. The parameter for the existence and ultimate protection of these rights is usually well and clearly defined by legislation; and where the parameter is unclear, it is expected that decisions would be made to preserve the perpetuation of such rights as long as such outcome would not impede the right(s) of another/others. This is exemplified by the presumption of innocence in criminal trial and the resolution of doubt in favour of an

accused person. See, for example, section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to as 'the Constitution of the FRN 1999) and section 138 of the Evidence Act (chapter 112) Laws of the Federation of Nigeria, 1990.¹⁵

A detailed account of the debates and intrigues surrounding the usage of the phrase 'rule of law' as it relates to the protection of human rights is outside the scope of this paper; suffice it to say that even though various scholars have approached the application of the phrase from various angles; there appears to be a consensus as to, at least, two of the general principles developed by A. V. Dicey for the application of the notion.

IV. General Principles of Rule of Law

The principles of the notion of rule of law as canvassed by scholars follow a similar leaning to the first two principles developed by A. V. Dicey to justify their adoption. According to him, there are principally three aspects of the rule of law. These are:

1. No one can be punished or made to suffer except for a breach of law proved in a court of law. "The rule of law...remains to this day a distinctive characteristic of the English constitution. In England no man can be made to suffer punishment or to pay damages for any conduct not definitely forbidden by law; every man's legal rights or liabilities are almost invariably determined by the ordinary Courts of the realm, and each man's individual rights are far less the result of our constitution than the basis on which that constitution is founded."¹⁶

2. No one is above the law¹⁷ and everyone is equal before the law regardless of social, economic, or political status. "When we speak of the 'rule of law' as a characteristic of our country, not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals."¹⁸

3. The incorporation of the principles of the rule of law as a binding part of the constitutional law; drawing from judicial authorities. "There remains yet a third and a different sense in which the "rule of law" or the predominance of the legal spirit may be described as a special attribute of English institutions. We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts."¹⁹

Dicey viewed that in England the idea of legal equality, or of the universal subjection of all classes to one law administered by the ordinary courts, has been exercised to its

utmost limit. "With us, every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen."²⁰ He cites several examples of cases in which officials have been brought before the courts and made, in their personal capacity, liable to punishment or to the payment of damages, for acts done in their official character but in excess of their lawful authority.

It follows therefore that for the imposition of any kind of punishment or fine, there ought to be proof of the commission of an offence before a court of law which warrants such imposition otherwise the human rights of the individual concerned will be violated. In order to safeguard the sanctity of justice and fairness in the presentation of such proof before a court of law, the rules of 'natural justice'²¹ (also known as rules of fair play) were developed to protect against arbitrary exercise of power and ensure fair play. Although these rules are considered to be 'natural' requirements in the attainment of justice and require no further enactment as law by legislation,²² as will be shown below, both rules have found position in the Constitution of the FRN 1999 and other International Conventions to which Nigeria is signatory. These rules are:

1. AUDI ALTERAM PARTEM (let the other side be heard): No person accused of the commission of an offence or that can be directly affected by a decision shall be condemned unless he has been given a fair and ample ground to present his/her case in rebuttal of the accusation. The rule of *audi alteram partem* predates the arrival of man on earth. In the first ever recorded case of Adam in the Garden of Eden, God (even though as Justice Kayode Eso succinctly observes, "He was the complainant, the investigator, the prosecutor, the judge, and the jury all rolled in one"²³) accorded Adam the right to be heard before passing judgement on him. In the case of *R v. Chancellor, Masters and Scholars of Cambridge* (1716) 1 Ssn 557, Fortesque J. painted a dramatic re-enactment of that trial in the Garden of Eden:

"Adam (says god) where art thou? Has thou not eaten of the tree where I commanded thee that shouldst not eat? And the same question was put to Eve also".

Thus Adam and Eve were given the opportunity to be heard and to call witnesses (in this case, the snake) before judgement was passed on them. Hence, the rule of fair hearing is antecedent to the modern political society. This rule is completely and utterly breached in cases of extra-judicial killings.

2. NEMO JUDEX IN CAUSA SUA (No man shall be a judge in his own cause): A person who adjudicates cannot be one of the parties in the case nor have an interest²⁴ in its outcome. This is enshrined to ensure impartiality and fairness in adjudication. It underlies

the doctrine of reasonable apprehension. Hence, any decision, no matter how fair it may appear, is considered invalid if made by a person with interest in the outcome or any reasonable bias that might have affected his impartiality. In cases of extra-judicial killings, the suspects are not even afforded an adjudication to determine their guilt or innocence. The police (or any other agent involved in the killing) are the accuser, the prosecutor, the judge, and the executioner.

This begs the question, what is ‘justice’?

As Hans Kelsen wrote: “No other question has been discussed so passionately, no other question has caused so much precious blood and so many bitter tears to be shed; no other question has been the object of so much intensive thinking by the most illustrious thinkers from Plato to Kant”²⁵ than the question ‘what is justice’? And yet to this day same question still has the ability to generate passionate debate with distinct dimensions and approaches to what the definitive answer ought to be. Kelsen offers his attempt at defining ‘justice’ thus: “Justice is social happiness. It is happiness guaranteed by social order,”²⁶ which he admitted is evidently not a final answer to the question but rather only shifts the question to another angle ‘what is happiness’?

Rather than going through the debates that surround the definition of the word, I limit my analysis to the elements of justice that have received a nod of approval from both ancient and contemporary scholars. All agree that justice connotes equality, fairness, appropriateness and deserving. It generally means what is ‘right’.

V. Extra-Judicial Killing and Its Correlation with Rule of Law in Nigeria

The examination of extra-judicial killings in this research is done from the legal angle; but whether the examination is conducted from Freudian, religious or even moral angle, the human right to life is one accorded a primal place, and its protection is automated at birth and can only cease as a result of the existence of some pre-disclosed lawful condition(s). The protection of right to life is an intrinsic feature of the existence of rule of law in democratic societies.

1. Background

Protection of fundamental human rights of citizens is central to the principle and practice of democracy all over the world. The path to democracy is not just premised on the conduct of elections but also on adherence to the rule of law in the governance of the populace; ensuring that the rights of the citizenry are entrenched and protected. Democracy consists of four basic elements:

- i. A political system for choosing and replacing the government through free and fair elections;
- ii. The active participation of the people, as citizens, in politics and civic life;
- iii. Protection of the human rights of all citizens;
- iv. A rule of law, in which the laws and procedures apply equally to all citizens.²⁷

Human rights are requirements which every democratic State is expected to ensure to its citizens. The protection of human rights is therefore a primary condition to the existence of democratic society. It is the expectation that the rule of law will blossom and thrive in a democratic setting. A critical look at the history of human rights situation in Nigeria depicts a nation accustomed to extra-judicial killings by security personnel, especially the police. This is principally because of the dominance of military rule²⁸ in the polity of the country since its independence²⁹; who, once in control, immediately suspend the Constitution (the supreme law of the land, which, amongst other things, guarantees and safeguards the fundamental human rights of the citizens) from operation. However, as will be shown in this paper, extrajudicial killings by security personnel still persists in democratic Nigeria.

Nigeria is signatory to major International and Regional Treaties on human rights. These include:

- i. United Nations Universal Declaration of Human Rights³⁰ (UDHR) adopted on 10th December 1948; articles 3, 10, and 11 thereof are instructive:

Article 3: "Everyone has the right to life, liberty and security of person."

Article 10: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

Article 11: "(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

- ii. The International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966 which came into force on 23 March 1976,³¹ which by Article 6.1 provides that:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

iii. African Charter on Human and Peoples Rights adopted on 27th June 1981³² entered into force on 21st October 1986; article 4 thereof provides that: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.” Article 7(1) further provides that “Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.”

The provisions of these international instruments find convergence in Nigeria’s Constitution. It recognises and protects the sanctity of human life. Section 33(1) provides that:

“Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.”

Section 36(10) further provides that “In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”

It equally recognises the freedom of individuals from torture and enshrines the presumption of innocence in the prosecution of persons suspected of commission of crimes. See section 36(5) which provides that:

“Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.”

Apart from the constitutional provisions, there are other legislations enacted by the National Assembly pursuant to their constitutional powers of legislation, which dictate and regulate the duties and conduct of security agents in general and Police officers in particular.

2. Duties of the Nigeria Police Force

The Nigeria Police Force is established by section 214 of the Constitution of the FRN 1999 with powers and responsibility for the maintenance and securing of public safety and public order within the country. Section 4 of the Police Act,³³ chapter 359, Laws of the Federation of Nigeria 1990 enumerates the duties of the Nigeria Police Force to include:

- i. Prevention and detection of crime;
- ii. Apprehension of offenders;
- iii. Preservation of law and order;
- iv. Protection of life and property;
- v. Due enforcement of all laws and regulations with which they are charged; and
- vi. Performance of such military duties within or without Nigeria as may be required by them by, or under the authority of, this or any other Act.

In addition to the above duties, the Nigeria Police Force has the power of arrest without warrant by virtue of section 10 of the Criminal Procedure Act, chapter 80 Laws of the Federation of Nigeria 1990.³⁴ It is also lawful, pursuant to the provision of section 24 of the Police Act, for any police officer and any person he may call upon to his assistance, to arrest without warrant, in any of the following cases:

- i. Any person whom he finds committing a felony, misdemeanour, or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanour or breach of the peace;
- ii. Any person whom any other person charges with having committed a felony or misdemeanour;
- iii. Any person whom any other person:
 - a. suspects of having committed a felony or misdemeanour, or

- b. charges with having committed a simple offence, if such other person is willing to accompany the police officer to the police station and to enter into recognisance to prosecute such a charge.

The above account clearly shows that there is no dearth of laws and regulations to guide the conduct and actions of security agents in their dealings with civilians. The question then arises, if these laws exist, why is compliance erratic, especially in democratic administration as had been the case in Nigeria since 1999?

VI. Situation Analysis

Extrajudicial killings are killings *ultra vires*, mainly based on suspicion. Since the end of military rule in 1999, Nigeria has witnessed the longest stretch of uninterrupted civilian government in its history as a nation. While this period has recorded some improvements in respect for civil and political rights, government agencies including law enforcement agencies and especially the police and the army, have continually been implicated in wide-ranging abuses of human rights including extra-judicial killings of civilians. There are no systematic statistics recording such killings, however, several international and domestic organisations have separately and sometimes jointly conducted researches into the alleged killings and compiled varying statistics as to the number of persons killed without legal justification within the period they reviewed. Although there is no consensus as to the exact number (which is not surprising considering that the source which could verify the accuracy of any figure arrived at is the perpetrator of the atrocities), there is consensus that such killings do occur. Police cite various reasons for the killings depending on the circumstances in which it occurred. Where a suspect is killed in police custody, the common reason cited is attempted escape by the suspect. They usually rely on section 33(2) of the Constitution to legitimise such action. The subsection provides that “a person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary – (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained.” In situations where the killing occurred at the point of arrest, police proffer self-defence as a reason mostly claiming that the suspect attacked the police first. They rely on section 286 of the Criminal Code Act³⁵, chapter 77 Laws of the Federation of Nigeria 1990 as their justification. It provides that “When a person is unlawfully assaulted, and has not provoked the assault, it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defence against the assault: Provided that the force used is not intended, and is not such as is likely, to cause death or grievous harm. If the nature of the assault is such as to cause reasonable apprehension of death or grievous harm, and the person using force by way of defence believes, on reasonable grounds, that he cannot otherwise preserve the person defended

from death or grievous harm, it is lawful for him to use any such force to the assailant as is necessary for defence, even though such force may cause death or grievous harm.”

According to police statistics,³⁶ in year 2000, 2,402 armed robbers were killed in ‘shoot-outs’. In 2005, police officials told Human Rights Watch that from January 2000 to March 2004 police personnel killed 7,198 “armed robbers” in “combat.” During the first three months of 2004, the police claimed to have killed 422 “armed robbers” in shootouts, while recovering only 300 firearms.³⁷ On 14th November 2007, the Inspector General of Police announced that 785 suspected “armed robbers” were shot and killed in gunfire exchanges with the police between June and the beginning of September 2007. A human rights group, the International Society for Civil Liberties and the Rule of Law (Intersociety), has revealed that over 10,000 people have been unlawfully killed by the Nigerian Police in Nigeria since 1999.³⁸ These deaths were recorded in police cells, scenes of arrest, police road blocks and those who died as a result of being tortured by the police.

Similarly, a U.S. State Department report published on 11th March 2010,³⁹ describes, in great detail, some of the instances of extrajudicial killings in Nigeria in 2009, which were carried out by security agents. It finds that the government or its agents were responsible for numerous extrajudicial killings; the report cites the following examples:

i. During the year 2009, the Joint Task Force (JTF), a unit formed in 2003 to restore stability in the Niger Delta and composed of elements of the military, police, and security services, conducted raids on militant groups and criminal suspects in the Niger Delta, resulting in numerous deaths and injuries. Credible reports also indicated that military personnel and paramilitary mobile police carried out summary executions, assaults, and other abuses across the Niger Delta;

ii. From 26th to 29th July, 2009, violent clashes between police and militant members of *Boko Haram*⁴⁰ in four northern states (Borno, Bauchi, Yobe and Kano) resulted in more than 700 deaths; quick burials in mass graves precluded an accurate accounting of the dead. Corpses of suspected militants were found at police stations, and there were numerous reports of persons being pulled from cars and summarily shot. According to Amnesty International, on 30th July 2009 alone, security forces killed an estimated 200 alleged members of the sect trying to flee Maiduguri.

On the same date of 30th July 2009, the police in the northern city of Maiduguri, Borno State, executed Mohammed Yusuf, the leader of a sectarian sect (*Boko Haram*) in police custody. The following day, his father-in-law, Baba Fugu Mohammed, and a former state government official suspected of funding *Boko Haram*, Mr. Buji Foi, were also killed in police custody.⁴¹ The video tape of the killing of Mohammed Yusuf was obtained by an Aljazeera news reporter and aired on its network.⁴² Following which, in February 2010, Aljazeera reported⁴³ that 17 security officers were arrested in connection with the killings. However, there are no records of any legal actions taken against the arrested officers.

Human Rights Watch, in its 2010 World Report, reported this incident and reported further that “the police and military were credibly implicated in more than 130 unlawful killings while responding to the election-related violence in Jos, Plateau State, in November 2008.”⁴⁴ It also reports that security forces were implicated in the massacre of more than 200 people in Benue State in 2001 and the complete destruction of the town of Odi, Bayelsa State, in 1999.⁴⁵

With regard to the killings in Maiduguri, Borno State, in July 2009, although up to the time of writing this paper there was no criminal charge filed against any of the security forces implicated in the killings; a civil case was filed by the son of late Baba Fugu Mohammed (Baba Kura Alh. Fugu) against the Nigeria Police Force;⁴⁶ seeking compensation for the unlawful killing of his father. On 13th April 2010, a Maiduguri High Court in Borno State, Nigeria, in case number BOHC/MG/CV/O12M/10, ordered the Federal Government of Nigeria, Borno State Government, and the Nigeria Police Force to pay One Hundred Million Naira⁴⁷ compensation to the family. In its judgement, the court held, *inter alia*, that the extra-judicial killing of the deceased was illegal and unconstitutional as it violated his right of fair hearing and right to life as enshrined in sections 36 and 33 of the Constitution of the FRN 1999 respectively. It also held that such killing violated the African Charter and the Universal Declaration of Human Rights. This judgement has however been appealed by the Federal Government in Appeal number CA/J/119/2010; yet to be decided.

Similarly, Amnesty International, in December 2009, published a report entitled *Killing at Will: Extrajudicial Executions and Other Unlawful Killings by the Police in Nigeria*,⁴⁸ a 64 page report which documented 39 cases of security force killings and enforced disappearances and was based on interviews and research conducted between July 2007 and July 2009. According to the report, the police were responsible for hundreds of extrajudicial executions, other unlawful killings, and enforced disappearances each year. Victims were not picked at random and, because of the endemic nature of bribery and corruption in the system, those who could not afford to pay bribes when asked to do so by the police were at risk of being shot or tortured to death. Commercial drivers were often stopped and asked to pay a bribe, those who refused to pay or who disagree about the amount to be paid are sometimes shot by the police. Amnesty International documented some of those instances that occurred in 2009.⁴⁹ The statistics, which Amnesty International obtained from the Nigeria Police Force show the following figures as the number of ‘armed robbers’⁵⁰ killed by the police from 2003 to 2008:

Table 1. Number of ‘Armed Robbers’ Killed by the Nigeria Police Force

Year	No. of ‘Armed Robbers’ Killed
2003	545
2004	569
2005	252
2006	329
2007	462
2008	857
Total	3, 014

Source: Amnesty International: *Killing at Will: Extrajudicial Executions and Other Unlawful Killings by the Police in Nigeria*, (9th December, 2009), p.22

Conversely, the duties of the Nigerian Police include the protection of lives and properties irrespective of social status or religious affiliations. The Nigerian Police is an institution established to maintain social order and enforce the laws of the country.⁵¹ The powers of the police are limited to lawful arrest, lawful detention (24 hours, and, in some cases, beyond),⁵² lawful prosecution, and lawful enforcement of court orders. The powers of the police do not extend to imposition of punishment.

Independent government investigations into killings where security agents are implicated are rare and where they take place, credibility and accountability are usually questionable. This is avoidable considering the provisions of relevant laws with regard to the procedure to be adopted in case of death in official custody. As will be shown below, this procedure provides a clear modality for the uncovering of the cause of such death; and where cause of death is ascertained, it would provide a clear premise for the apportionment of blame and ultimate prosecution of persons involved.

It is trite that extra-judicial killing is unconstitutional. It is also trite that it is the responsibility of the country under domestic and international laws to protect the lives of the citizenry and where any life is taken without regard to established laws, it is the responsibility of the Government to provide machinery for redress; through prompt and thorough investigation, prosecution of those suspected to be in violation, and imposition of appropriate punishment on those found guilty of such violation, and victim pacification through award of ‘adequate’ compensation. Hence, there is a direct correlation between the rule of law and extra-judicial killings.

1. Procedure in Cases of Death in Official Custody

According to Coroners Act 1945,⁵³ section 5(1), wherever there is information indicating that the body of deceased lies within jurisdiction and the death is suspected to have been

violent or unnatural, a coroner's inquest is mandatory to determine the cause of death. Coroner's inquest is also mandatory where death takes place in police, prison, or lunatic asylum custody. An inquest held by a coroner⁵⁴ is aimed at determining the cause of any violent, sudden, or mysterious death. This procedure is, however, merely on paper. A nationwide research conducted in 2008⁵⁵ by Access to Justice of Coroner Laws Reports in Nigeria discovers that although Coroner Laws still exist, they are practically Dead Letter Laws as their provisions are not followed in dealing with deaths in official custody.

VII. Reason d'Etre for the Perpetration of Extrajudicial Killings in Democratic Nigeria

1. Poor Training of the Police Force: The curriculum of the Police Training Schools does not include courses on human rights. Hence, the necessary basic knowledge of the rights of the civilians and their protection under the law is not inculcated at the initial training of police recruits. This type of training is provided at later stage in the career of police officers. Unfortunately, the bulk of the investigative work of the police is carried out by these partially trained recruits. With limited knowledge of their responsibilities to the civilians, they are unleashed unto the society, armed and *proud* in their newly found power.

2. Lack of resources:

2.1 Dearth of modern crime-fighting equipments: Lack of modern crime-fighting equipments impairs the ability of security agents to comply with rules of conduct of their responsibility. For example, it is found that even during the conduct of elections in Nigeria "there was inadequate provision of vehicles for use by security personnel Most security officials had no communication equipment. The few with personal mobile phones utilised them at their own cost to report incidents to their superiors."⁵⁶

2.2 Lack of basic modern skills of investigation: Police investigation in Nigeria is conducted in rudimentary fashion. There are no clear methods of establishing the link between a suspect and the crime he is accused of committing through forensic evidence. Police stations are not equipped with forensic laboratories, hence the use of finger prints, footprints, fibres, tool marks, DNA, etc, to link an accused person with a crime committed is not standard procedure to Nigeria police force. Surveillance is conducted without electronic monitoring devices.

3. The entrenchment of torture as a method of interrogation by the police: In March 2007 the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions found that torture remained "an intrinsic part of how law enforcement services operate" in Nigeria. In 2009 alone, the National Human Rights Commission received a

total of 71 complaints of degrading treatment and extrajudicial killings by law enforcement agents.⁵⁷ As the report by International Society for Civil Liberties and the Rule of Law (Intersociety) indicates, some of the deaths that occur in police custody occur as a result of torture. The initial intention by the police may not always be to take the lives of the victims; the torture could be aimed at exerting pain in order to obtain confessional statement in relation to an alleged offence committed by the suspects.

4. **Flawed Rules of Engagement:** The standing “rules for guidance in use of firearms by the police” are deeply flawed. Police Order No. 237 authorizes the use of firearms if a police officer cannot “by any other means” arrest or re-arrest any person who is suspected (or has already been convicted) of an offence punishable by death or at least seven years’ imprisonment. The rules which elaborate upon this provision are even more permissive.⁵⁸ According to these rules, any person who seeks to escape from lawful custody commits a felony warranting a seven-year sentence. As a result it would be justified to shoot to kill someone charged with stealing goods of negligible value but alleged to be seeking to escape from custody. These rules practically provide the police carte blanche to shoot and kill at will.⁵⁹

The above provision is at variance with the United Nations Basic Principles on the Use of Force and Firearms, Principle 9 thereof provides that: “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, international lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

The existence of Police Order 237 makes it difficult to categorise a lot of killings by the police as extra-judicial killings. Because of the absence of credible investigation to establish the actual circumstance in which the killings occur, the police are almost always able to rely on one rule or another to bring the killings within the purview of legitimate use of force.

5. **Lack of Credible Investigation:** The United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions observes that the Nigeria Police Force’s mechanisms for investigating police misconduct are impressive – but only on paper: “The system has rarely worked in cases in which police are accused of extrajudicial executions. In these instances genuine investigations are rare and referrals to the Director of Public Prosecution for prosecution are even rarer. It is also not uncommon for the primary accused police officer to escape, for charges to be brought against others, and for the latter to be acquitted on the grounds either of insufficient evidence or of prosecution of the

wrong officers. The result gives the appearance of a functioning investigative system, while in fact promoting the goal of de facto police impunity.”⁶⁰

6. Impunity from prosecution: This flows from number 5 above. Because allegations of involvement of security agents in extrajudicial killings are not usually fully and credibly investigated, majority of reported cases go unpunished; the few that made it to trial are mostly the resultant involvement of civil society groups, International Organisations, and/or the International media. According to the Human Rights Watch in its 2010 World Report, despite claims of loss of hundreds of lives in sectarian clashes in late 2008 and 2009, the Government of Nigeria has failed “to investigate, much less hold accountable, members of the security forces implicated in numerous incidents of extrajudicial killings, torture, and extortion.”⁶¹ In the same report, Human Rights Watch finds that “The government demonstrated a lack of political will to reform the police, who were again implicated in numerous extrajudicial killings of persons in custody, torture of criminal suspects, and widespread extortion and corruption.”⁶²

Authorities do not usually hold police accountable for the use of excessive or deadly force or for the deaths of persons in custody. The U.S. Department of State Report on the human rights situation in Nigeria in 2009 also finds that police generally operated with impunity in the apprehension, illegal detention, and sometimes execution of criminal suspects. The reports of state or federal panels of inquiry investigating suspicious deaths were also not always published.⁶³ In its report, Amnesty International finds that the majority of the cases it documented were not investigated nor were the perpetrators punished. When investigations did occur, they did not comply with international standards, and officers suspected of extrajudicial executions were generally sent on training or transferred to other states instead of being prosecuted.⁶⁴

In 2007 a local non-governmental organisation (NGO), Network on Police Reform in Nigeria, a coalition of 39 NGOs monitored 400 police stations in 13 states for a year and found that killings, torture, extortion, and rape had become routine because authorities shielded police officers from the law.⁶⁵

7. Complacency: Where allegations of excessive use of force occasioning loss of life are made against any agency of the armed forces, it is found that the agency often tend to resort to cover-up by keeping vital evidence out of reach of prosecutors. The existence of the Police Complaint Bureau (a unit established in 2003 to investigate, internally, police personnel alleged to be involved in unlawful acts) is more likely to perpetuate the atmosphere of impunity already in place in the system.

8. Perversion of military culture: The long period of military rule in the country has inadvertently entrenched the culture of ‘military justice’ in the behaviours of officials, especially the law enforcement officials. For the decades that Nigeria had been under

military rule, armed personnel had operated unhindered by the requirement to follow any set of rules other than those made by their superiors; rules that changed from day to day depending on the needs the superior officers wish served, and were not based on any reason of fairness or justice. And if recent happenings in the country are any indication, this trend is not likely to change anytime soon. For example, on 18th January 2011, the Spokesperson for the Special Military Task Force on Jos Crisis (STF), Captain Charles Ekeocha announced that the STF has received orders to, from 17th January 2011, shoot to kill any individual or group seen to be perpetrating any act of violence.⁶⁶

9. **Shortcut Syndrome:** The route to justice is long. It requires the conduct of investigation, prosecution, conviction; and may sometimes go on appeal in some cases all the way to the Supreme Court. This could take several years and will cost substantial amount of money. Time and money the authorities could save if the suspect is 'removed'. For example, Judgement in the case of Saburi Adebayo vs. Attorney General of Ogun State (2006) S. C. 186, a case of armed robbery which occurred in 1994 was only concluded in 2008; 14 years after the commission of the alleged offence; years that were spent in courts, costing time and money.

10. **Record Keeping:** There is no up-to-date record of killings by the police in Nigeria. Researchers mainly rely on the data compiled by International Organisations because the official records are either contradictory or inaccessible.

VIII. Recommendations

1. Training on human rights, their protection under the law, and the conduct of police officers in ensuring their safeguard ought to form part of the curricula for the training of recruits. Periodic re-training of officers at all levels on those rights and the advanced modern methods of their protection also ought to form part of the annual calendar of not only the police force but all the security agents in the country. Training also ought to extend beyond rudimentary methods of investigation and be collaborative with other international partners. Recently⁶⁷, INTERPOL releases a press statement which quotes Nigeria's Minister of Police Affairs, Dr. Ibrahim Yakubu Lame, expressing commitment to develop and enhance police training with closer cooperation and support from INTERPOL. If followed through, and, hopefully expanded to cooperation with other foreign police forces, it would improve the level of professionalism in the Force.

2. The government ought to make provision of modern forensic and communication gadgets, and transportation for security agents. The security agents also ought to receive periodic training on modern investigation techniques. The use of modern investigation techniques and equipments would negate the so-called need for confessional statement of

suspects to obtain conviction thereby removing the need to resort to torture by the police in order to obtain one.

3. Rules of Engagement of the Nigeria police force requires overhaul to bring it in line with International standard practice on the use of firearms. Generally, the reliance on provisions of the Constitution and other legislations by the police in order to escape liability arises as a result of lack of credible and transparent investigation; which existence would expose any attempt at cover-up. The existence of some of those provisions, if properly utilised, will protect rather than endanger the populace.

4. Credible Investigation: Full and credible investigations into past killings where armed personnel are alleged to have been involved would unearth the truth and could serve as a deterrent to those who consider the privilege of being in uniform as a licence to kill.

5. There should be an end to the era of impunity for illegal actions committed by security agents. Until and unless police and other armed personnel are subjected to the full judicial process and appropriately punished when found guilty, extra-judicial killings would continue to remain a method of eliminating unwanted elements; and some members of the public would continue to administer their own version of justice: revenge, insurgency and jungle-justice. The police comport themselves with an aura of being above the law. As the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions surmised it “the manner in which a government reacts to human rights violations committed by its agents, through action or omission clearly shows the degree of its willingness to ensure effective protection of human rights.”⁶⁸ As is reported periodically, since the execution of the leader of *Boko Haram* in police custody in July 2009, members of the sect have gone on rampage killings of police officials, police informants, and attempts on the lives of politicians. This has created an atmosphere of fear and insecurity in Borno and other neighbouring States. The members claim that the killings are in vengeance as a result of the public execution of their leader. They vow to continue with killings of police officials and traditional rulers until those involved in the death of their leader are brought to justice.⁶⁹ These insurgences have given credence to Plato’s assertion that where the rule of law is absent “the collapse of the state is imminent.”⁷⁰ Of course the failure to fully and effectively deal with erring security agents by the government is by no means a justification of lawlessness; rather, it is an indication of the looming danger of a nation slipping into conflict, disorder, and anarchy once the rule of law is not enshrined and protected.

6. Police Complaint Bureau should comprise of persons out-with the police force in order to ensure impartiality. Its membership could draw from non-governmental

organisations, professional bodies such as the Nigerian Bar Association (NBA), community leaders, etc.

7. Expeditious adjudication of cases: All players in the administration of justice in Nigeria have a role to play in seeing that the wheel of justice is not clogged; and that trials are held expeditiously and justice dispensed timely. The police, the prosecutors, the lawyers, and the judges all ought to avoid tendencies that could slow the process of adjudication; justice delayed is justice denied.

8. Proper record keeping of reported instances of involvement of security personnel in extrajudicial killing would provide a clear picture as to the depth of the problem. Nonchalance by the officials in keeping such records would not diminish the existence or consequence of such acts; rather, it will further discredit the authorities in the eyes of the citizenry.

IX. Conclusion

Interestingly, as the paper shows, all sides involved or affected by extrajudicial killing (the perpetrators, the victim, the victim's family, advocates against) seem to find sanctuary in human rights norms. Oddly enough, the perpetrators tend to benefit more from the norms than the victims. This is not by design but because of the identified loopholes and shortcomings in the system. The institutional weakness of Nigeria's security agencies in complying with the legal framework for the conduct of their operations is a threat not only to the rule of law but also to the continued survival of democracy in the country. Actions of security agents ought to be geared towards securing justice and fairness for the citizens who see the security agents and the judiciary as the crucial comfort shroud for the common man under a democratic system of government. Since these agencies are responsible for the protection of the rights of the citizens, their actions could make or mar cohesive existence of a peaceful Nigeria. Unless justice and fairness are made core goals of security agents in the country, instability could follow. The choice is more or less between justice and stability or injustice and instability.

Notes

¹Extra-judicial killing refers to any execution of person(s) by the State or other official authority via any of its agencies other than those carried out in conformity with the law.

²For example Constitution (Suspension and Modification) Decree, 1969.

³K. Eso, *Thoughts on Human Rights Norms vis-à-vis The Courts and Justice: African Court or Domestic Court?*, Nigerian Institute of Advanced Legal Studies, Lagos (1995) pp. 1-36.

⁴O. Olakanmi, *Handbook on Human Rights* (Abuja: Law Lords Publications, 2007).

⁵Olakanmi, *Handbook on Human Rights*, Ibid., p.1.

⁶E.E.O. Alemika and I.C. Chukwuma, *Analysis of Police and Policing in Nigeria* (Lagos: Clean Foundation, Justice Sector Reform, 2001).

⁷E.E.O. Alemika and I.C. Chukwuma, *Analysis of Police and Policing in Nigeria*, Ibid., p.5.

⁸Security agencies in Nigeria include Nigeria Police Force, Nigerian Army, Nigerian Air Force, Nigerian Navy, Nigeria Security and Civil Defence Corps, Nigerian Immigration Service, Nigerian Custom Service, Nigerian Prison Service, and State Security Service.

⁹Doctrinal Methodology is distinguished as 'Research in Law' as opposed to Interdisciplinary Methodology, which is 'Research about Law'. See for example, P. Chynoweth, Legal Research, in A. Knight and L. Ruddock (eds.), *Advanced Research Methods in the Built Environment* (Wiley-Blackwell, 2008) p.29. Doctrinal method of research could be either qualitative (as the instant research) or quantitative.

¹⁰A.S. Mathews, *Law, Order and Liberty in South Africa* (University of California Press, 1972) p.5 footnote 1 (quoting The Politics of Aristotle translated by Jowett; Oxford, 1885, I 102).

¹¹J.M. Cooper and D.S. Hutchinson, *Complete Works of Plato* (Hackett Publishing, 1997) p.1402.

¹²A. V. Dicey, *Introduction to the Study of the Law of the Constitution* ((All Souls College, Oxford, 1885)-Macmillan (reprint), 1998).

¹³J. Rawls, *The Law of Peoples: with "The Idea of Public Reason Revisited"* (Harvard University Press, 2001).

¹⁴L. H. Pollak, *The Constitution of the Supreme Court* (1968) Volume 1 p.18.

¹⁵The Laws of the Federation of Nigeria is a compilation of laws in force as of the 31st day of January 1990 revised and consolidated pursuant to The Revised Edition (Laws of the Federation of Nigeria) Decree 1990. The work was carried out by the Law Revision Committee led by the late Honourable Mr. Justice George Baptist Ayodola Coker, Retired Justice of the Supreme Court of Nigeria.

¹⁶A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, Supra (1998), note 12, p.22.

¹⁷Lex rex 'Law is King' in contrast to rex lex 'the sovereign is above the law' as popularised in modern times by the famous saying of President Richard Nixon of USA in 1977 in reaction to questioning from David Frost in the Watergate scandal where when asked "Are you really saying that the President can do something illegal?," he replied "I am saying that when the President does it, it is not illegal."

¹⁸A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, Supra (1998), note 12, p.164.

¹⁹A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, Ibid., p.165.

²⁰A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, Ibid., p.164.

²¹Natural Justice is a concept developed in common law jurisdictions by courts of equity for the attainment of just and/or fair processes in legal proceedings but their application is now common in both common law and civil law jurisdictions.

²²As was observed by Justice T. S. Sivagnanam in a lecture delivered at Tamil Nadu State Judicial Academy on 1st June 2009 to newly recruited Civil Judges (JR Division) during Induction Programme 2009; extrapolating from the dictum in the case of *Maclean vs. The Workers Union* (1929) 1 Ch. 602, at 604 “The phrase is, of course, used only in popular sense and must not be taken to mean that there is any justice natural among men. Among most savages there is no such thing as Justice in the modern sense. In ancient days, a person wronged executed his own justice. Amongst our own ancestors, down to the thirteenth century, manifest felony, such as that of a manslayer taken with his weapon, or a thief with the stolen goods, might be punished by summary execution without any form of trial. Again, every student has heard of compurgation and of ordeal; and it is hardly necessary to observe that (for example) a system of ordeal by water in which sinking was the sign of guilt, a system which lasted in this country for hundreds of years, has little to do with modern ideas of justice.”

²³K. Eso, *Thoughts on Human Rights Norms vis-à-vis The Courts and Justice: African Court or Domestic Court?*, Ibid. note 3, p.3.

²⁴This could be either legal interest or pecuniary interest or both.

²⁵H. Kelsen, *What is Justice? Justice, Law, and Politics in the Mirror of Science Collected Essays by Hans Kelsen* (Los Angeles: University of California Press, 1971), p.1.

²⁶H. Kelsen, *What is Justice? Justice, Law, and Politics in the Mirror of Science Collected Essays by Hans Kelsen*, Ibid., p.2.

²⁷L. Diamond, ‘What is Democracy?’ Lecture at Hilla University for Humanities Studies, 21 January 2004. (<http://www.stanford.edu/~ldiamond/iraq.html> (accessed on 19th December 2010))

²⁸Military coups and counter-coups viz 15 January 1966 (General Aguiyi Ironsi regime); July 1966-1975 (General Yakubu Gowon regime); 29 July 1975 (General Murtala Mohammed regime); 13 February 1976 - 1979 (General Olusegun Obasanjo regime); 31 December 1983 (General Mohammed Buhari regime); 1985 - 1993 (General Ibrahim Badamasi Babangida regime); 17 November 1993 – 8 June 1998 (General Sani Abacha regime); June 1998 – 29 May 1999 (General Abdulsalam Abubakar); spanned a total of 28 years only briefly broken by the Second Republic civilian administration between 1979 and December 1983.

²⁹Nigeria gained independence from the Great Britain on 1st October 1960.

³⁰Nigeria became a member of the United Nations, a fortiori a subscriber to the Universal Declaration of Human Rights, on 7th October 1960.

³¹Nigeria ratifies the Covenant on 29 July 1993.

³²Nigeria is an original signatory to the legislation and ratified it at its inception.

³³The Police Act came into effect on 1st April 1943 and is codified as Chapter 359 of the Laws of Federation of Nigeria 1990.

³⁴This Act was passed on 1st June 1945 and codified as Chapter 80 of the Laws of the Federation of Nigeria, 1990. It is applicable in the southern part of Nigeria. Its provisions are similar to those of the Criminal Procedure (Northern States) Act, Chapter 81 Laws of the Federation of Nigeria 1990, applicable in the Northern part.

³⁵This Act was passed on 1st June 1916 and codified as Chapter 77 of the Laws of the Federation of Nigeria, 1990.

³⁶The statistics are quoted in National Human Rights Commission: The State of Human Rights in Nigeria 2008, a Report on the Human Rights Violations Monitors in collaboration with the National Human Rights Commission, UNDP and NORAD, (NHRC 2008), p.21-22.

³⁷See the Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, on his Mission to Nigeria (27 June – 8 July 2005), UN Doc: E/CN.4/2006/53/Add.4.

³⁸International Society for Civil Liberties and Rule of Law (Nigeria), ‘As Unlawful Killings by the State and Non-State Actors Increased to 34,000 Since 1999, Nigeria’s Criminal Justice System is at the Crossroad of Disastrous Precipitation’ (17th March 2010) p.2.

³⁹U.S. Department of State, ‘2009 Human Rights Report: Nigeria’ (11th March 2010), <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135970.htm> (accessed on 19th January 2011).

⁴⁰‘Boko Haram’ in Hausa dialect literally translates as ‘western education is prohibited’. As a group, the Boko Haram sect, advocates for the application and strict interpretation of Sharia Law in Nigeria. They are formed under the name of ‘Ahlu Sunnah wal jama’ah’ but are more commonly known as ‘Boko Haram’ because elimination of western education in the society is one of the key issues they advocate for.

⁴¹Human Rights Watch, ‘2010 World Report’, p.143-144. See also Human Rights Watch, ‘Nigeria - Arbitrary Killings by Security Forces, Submission to the Investigative Bodies on the November 28-29, 2008 Violence in Jos, Plateau State, Nigeria’.

⁴²Aljazeera, Video shows Nigeria ‘executions’, 9 February 2010, <http://english.aljazeera.net/news/africa/2010/02/2010298114949112.html> (accessed on 6th January 2011).

⁴³Aljazeera, ‘Police Arrested In Nigeria Killings, 28 February 2010’, <http://english.aljazeera.net/news/africa/2010/02/201022820193376744.html> (accessed on 6th January 2011).

⁴⁴Human Rights Watch, ‘2010 World Report’, p.144.

⁴⁵Human Rights Watch, Ibid.

⁴⁶Parties named in the case are: The President of the Federal Republic of Nigeria, The Executive Governor of Borno State, The Attorney General of the Federation, The Attorney General of Borno State, and the Inspector General of Police.

⁴⁷Equivalent to about 650, 000 US Dollars.

⁴⁸Amnesty International, 'Killing at Will: Extrajudicial Executions and Other Unlawful Killings by the Police in Nigeria', (9th December, 2009).

⁴⁹Amnesty International, 'Killing at Will', *Ibid.*, p.9.

⁵⁰A quick caveat: It has been credibly confirmed (including in the 2009 Amnesty International report, *Ibid.*) that a number of victims killed and tagged as 'armed robbers' were not involved in any armed robbery. Moreover, no person can be called an 'armed robber' unless and until he/she is so pronounced by a court of law.

⁵¹See section 4 of the Police Act.

⁵²Section 35(3) and (4) of the Constitution of the FRN 1999 provide that any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention and shall be brought before a court of law within a reasonable time.

⁵³These are similar to, and in some provisions a replica of, Coroners Law (Laws of Lagos 1973, Chapter 30), and Coroners Law (Northern Nigerian Laws 1963, Chapter 27).

⁵⁴In Nigeria, every Magistrate is a coroner. Also, other 'fit and proper' persons may be appointed as coroner; such person has the same powers as those of a Magistrate with respect to summoning witnesses.

⁵⁵Access to Justice is a Nigeria-focused human rights advocacy group established in 1999. The report is published in its Journal 'The Coroner's Place' under the title 'Using Coroners to Uncover Facts about Extrajudicial Killings' (online copy of the complete report is at <http://accesstojustice-ng.org/corocontents.php>).

⁵⁶National Human Rights Commission, United Nations Democracy Fund (UNDEF), United Nations Development Programme (UNDP), 'Monitoring the Conduct of Security Personnel in the April 2007 General Elections' (October 2007), p. 3.

⁵⁷National Human Rights Commission, 'Annual Report 2009', p.27.

⁵⁸See, for example, section 3(d) of Police Force Order 237, which permits the use of firearms by police to "arrest a person who being in lawful custody escapes and takes the flight in order to avoid re-arrest; provided that the offence with which he is charged or has been convicted of is a felony or misdemeanour."

⁵⁹Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, on his Mission to Nigeria (27 June – 8 July 2005), UN Doc: E/CN.4/2006/53/Add.4.

⁶⁰Report of the United Nations Special Rapporteur, *Ibid.*

⁶¹Human Rights Watch, '2010 World Report', p.142.

⁶²Human Rights Watch, *Ibid.*, p.143-144.

⁶³U.S. Department of State, '2009 Human Rights Report: Nigeria', *Supra*, note 39.

⁶⁴Amnesty International, 'Killing at Will', *Supra*, note 48, p.25.

⁶⁵Cited by U.S. Department of State, '2009 Human Rights Report: Nigeria', *Supra*, note 39.

⁶⁶Daily Trust, 'Thugs Chase, kill INEC staffer in Jos' 18th January 2011,

http://dailytrust.dailytrust.com/index.php?option=com_content&view=article&id=10274:thugs-chase-kill-inec-staffer-in-jos&catid=2:lead-stories&Itemid=8#comment-27610 (accessed on 19th January 2011).

⁶⁷Interpol Media Release, 'Nigerian Minister pledges closer ties with INTERPOL in training and capacity building', 9th March 2010;

<http://www.interpol.int/public/ICPO/PressReleases/PR2010/PR017.asp> (accessed on 19th January 2011).

⁶⁸See the Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, on his Mission to Nigeria (27 June – 8 July 2005), UN Doc: E/CN.4/2006/53/Add.4.

⁶⁹BBC Hausa Service, 'Telephone Interview with Boko Haram Sect Member'. The interview was reported widely by electronic and print media in Nigeria, for example, Leadership Newspaper,

<http://www.leadershipeditors.com/ns/index.php>, (accessed on 10th January 2011); AllAfrica.com, 'Boko Haram – the Borno Saga', 2 January 2011, <http://allafrica.com/stories/201101041038.html> (accessed on 10th January 2011).

In the interview, the sect member said that they are on a revenge mission as most of their members were killed by the police, while the traditional rulers were targeted for disclosing the names and whereabouts of the sect members. The Borno State Police Commissioner confirmed that since the insurgence of recent attacks, 35 people have been killed by the members of the sect and they have taken 4 AK 47 rifles from slain police officers.

⁷⁰J.M. Cooper and D.S. Hutchinson, *Complete Works of Plato*, Supra, note 11, p.1402.

References

[Legislations]

Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Constitution (Suspension and Modification) Decree, 1969.

Coroners Law (Laws of Lagos 1973, Chapter 30).

Coroners Law (Northern Nigerian Laws 1963, Cap 27).

Criminal Code Act, chapter 77 Laws of the Federation of Nigeria 1990.

Evidence Act (chapter 112) Laws of the Federation of Nigeria, 1990.

Police Act (Chapter 359) Laws of the Federation of Nigeria 1990.

Police Force Order 237.

The Revised Edition (Laws of the Federation of Nigeria) Decree 1990.

[Books and Articles]

1. A.S. Mathews, *Law, Order and Liberty in South Africa* (University of California Press, 1972).
2. A.V. Dicey, *Introduction to the Study of the Law of Constitution* ((All Souls College, Oxford, 1885)-Macmillan (reprint), 1998).
3. B. Tamanaha, 'The Rule of Law for Everyone?' *Current Legal Problems*, Volume 55, Social Science Research Network (SSRN) (2002).
4. J.M. Cooper and D.S. Hutchinson, *Complete Works of Plato* (Hackett Publishing, 1997).
5. E.E.O. Alemika and I.C. Chukwuma, *Analysis of Police and Policing in Nigeria* (Lagos: Clean Foundation, Justice Sector Reform, 2001).
6. F. Neumann, 'The Rule of Law: Political Theory and the Legal System', in *Modern Society* Volume 77 (Berg Publishing, 1986).
7. F.R. Dallmayr, 'Hermeneutics and the Rule of Law', in *Cardozo Law Review*, Volume 11 (1990), pp.1449-1469.
8. G.D.Q. Walker, *The Rule of Law: Foundation of Constitutional Democracy* (Melbourne University Press, 1988).
9. H. Kelsen, *What is Justice? Justice, Law, and Politics in the Mirror of Science Collected Essays by Hans Kelsen*, (Los Angeles: University of California Press, 1971).
10. J. Rawls, *The Law of Peoples: with "The Idea of Public Reason Revisited"* (Harvard University Press, 2001).
11. K. Eso, *Thoughts on Human Rights Norms vis-à-vis The Courts and Justice: African Court or Domestic Court?* Nigerian Institute of Advanced Legal Studies, Lagos, 1995.
12. L. H. Pollak: *The Constitution of the Supreme Court* (1968) Volume 1.
13. M. Knight, (trans): *The Pure Theory of Law*, University of California Press, Berkeley, California, 1967) (Translation of H. Kelsen, *Reine Rechtslehre*, first published in 1934).
14. M. Stephenson, *Rule of Law as a Goal of Development Policy*, World Bank Research (2008).
15. O. Olakanmi, *Handbook on Human Rights* (Abuja: Law Lords Publications, 2007).
16. P. Chynoweth, 'Legal Research', in A. Knight and L. Ruddock (eds.), *Advanced Research Methods in the Built Environment* (Wiley-Blackwell, 2008).
17. R. Peerenboom, *Human Rights and Rule of Law: What's the Relationship?* Research Paper No. 05-31, University of California, Los Angeles School of Law *Public Law & Legal Theory Research Paper Series*.
18. R. Fallon, "'The Rule of Law" as a Concept in Constitutional Discourse', *Columbia Law Review* Volume 97, Number 1 (1997).
19. T. Becher, *The Disciplinary Shaping of the Profession*, in B.R. Clark, (ed.): *The Academic Profession*, (University of California Press, Berkeley, California, 1987).

[Reports]

1. Human Rights Watch, '2010 World Report'.
2. Human Rights Watch, 'Nigeria - Arbitrary Killings by Security Forces', Submission to the Investigative Bodies on the November 28-29, 2008 Violence in Jos, Plateau State, Nigeria.
3. International Society for Civil Liberties and Rule of Law (Nigeria), 'As Unlawful Killings by the State and Non-State Actors Increased to 34,000 Since 1999, Nigeria's Criminal Justice System is at the Crossroad of Disastrous Precipitation' (17th March 2010).
4. National Human Rights Commission, 'Annual Report 2009'.
5. National Human Rights Commission, United Nations Democracy Fund (UNDEF), United Nations Development Programme (UNDP), 'Monitoring the Conduct of Security Personnel in the April 2007 General Elections@ (October 2007).
6. National Human Rights Commission, 'The State of Human Rights in Nigeria 2008', a Report on the Human Rights Violations Monitors in collaboration with the National Human Rights Commission, UNDP and Norwegian Agency for Development Cooperation (NORAD), (NHRC 2008).
7. Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, on his Mission to Nigeria (27 June – 8 July 2005), UN Doc: E/CN.4/2006/53/Add.4.

[Internet Resources]

1. Aljazeera, 'Police Arrested In Nigeria Killings', 28 February 2010, <http://english.aljazeera.net/news/africa/2010/02/201022820193376744.html> (accessed on 6th January 2011).
2. Aljazeera, 'Video shows Nigeria 'executions'', 9 February 2010, <http://english.aljazeera.net/news/africa/2010/02/2010298114949112.html> (accessed on 6th January 2011).
3. AllAfrica.com, 'Boko Haram – the Borno Saga', 2 January 2011, <http://allafrica.com/stories/201101041038.html>, (accessed on 10th January 2011).
4. Amnesty International, 'Killing at Will: Extrajudicial Executions and Other Unlawful Killings by the Police in Nigeria', (9th December, 2009), <http://www.amnesty.org/en/library/asset/AFR44/038/2009/en/f09b1c15-77b4-40aa-a608-b3b01bde0fc5/afr440382009en.pdf> (accessed on 19th December 2010).
5. Daily Trust, 'Thugs Chase, kill INEC staffer in Jos' 18th January 2011, http://dailytrust.dailytrust.com/index.php?option=com_content&view=article&id=10274:thugs-chase-kill-inec-staffer-in-jos&catid=2:lead-stories&Itemid=8#comment-27610, (accessed on 19th January 2011).

6. Larry Diamond, 'What is Democracy?' Lecture at Hilla University for Humanities Studies, 21 January 2004,
<http://www.stanford.edu/~ldiamond/iraq.html> (accessed on 19th December 2010).
7. Leadership Newspaper,
<http://www.leadershipeditors.com/ns/index.php>, (accessed on 10th January 2011).
8. 'The Coroner's Place' under the title 'Using Coroners to Uncover Facts about Extrajudicial Killings' (online copy of complete report,
<http://accesstojustice-ng.org/corocontents.php>, (accessed on 19th January 2011).
9. U.S. Department of State, '2009 Human Rights Report: Nigeria' (11th March 2010),
<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135970.htm> (accessed on 19th January 2011).